

# EXHIBIT 52

Indianapolis, IN

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL ) MDL No. 1456

INDUSTRY AVERAGE WHOLESALE ) Master File No.

PRICE LITIGATION ) 01-CV-12257-PBS

-----) Subcategory Case

THIS DOCUMENT RELATES TO: ) No. 06-11337

United States of America ex )

rel. Ven-A-Care of the ) Hon. Patti B. Saris

Florida Keys, Inc., et al. )

v. Dey, Inc., et al., Civil )

Action No. 05-11084-PBS, and) VIDEOTAPED DEPOSITION

United States of America ex ) OF THE INDIANA FAMILY

rel. Ven-A-Care of the ) AND SOCIAL SERVICES

Florida Keys, Inc., et al. ) ADMINISTRATION by

v. Boehringer Ingelheim ) CARL MARK

Corp., et al., Civil Action ) SHIRLEY, R.Ph.

No. 07-10248-PBS ) VOLUME II

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DECEMBER 3, 2008

INDIANAPOLIS, INDIANA

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## Indianapolis, IN

<p style="text-align: right;">Page 407</p> <p>1 Q. Okay. I'd ask you to turn to page 14.    2 And I would ask you if you would agree with me --    3 well, I would ask you if you would explain to me    4 what you think that the information represented    5 on page 14 means, what it appears to be.    6 A. This is the process Myers &amp; Stauffer    7 used in going about establishing state MAC rates.    8 Q. Okay. And you would agree it appears    9 to explain the process that was effective for    10 several time periods on this page and continuing    11 through to page 16?    12 A. Yes.    13 Q. Can I ask you to just quickly review    14 any one of these, the section for process    15 effective June 2002 through March 2005 on page    16 14.    17 (Witness complied with request.)    18 Q. Is it your understanding that Myers &amp;    19 Stauffer was recommending -- or was stating that    20 the multiplier to average actual acquisition    21 costs in the state MAC program would be 1.2?    22 MS. ST. PETER-GRIFFITH: Object to the</p>	<p style="text-align: right;">Page 409</p> <p>1 multiplier. It's as stated. And I am not    2 familiar with the derivation of the 1.2 figure.    3 Q. Okay. This document, I'm just looking    4 at page 14, for June 2002 through March 2005    5 states that "An adjustment multiplier was applied    6 to the base rate to ensure that the applicable    7 state MAC rate is sufficient to allow reasonable    8 access by providers to the drugs at or below the    9 established state MAC rate. The multiplier was    10 1.2, meaning that the state MAC rate is equal to    11 120 percent of the base rate." And that section    12 also describes base rate as being the average    13 actual acquisition costs.    14 So do you understand that the    15 multiplier of 1.2 was chosen to ensure that    16 applicable state MAC rate is sufficient to allow    17 reasonable access by providers to drugs at or    18 below established state MAC rates?    19 A. That appears to be what the fourth    20 bullet point is stating.    21 Q. Now, it's my understanding that the    22 base rate discussed is the average actual</p>
<p style="text-align: right;">Page 408</p> <p>1 form.    2 A. States the multiplier was 1.2.    3 Q. Was for that period?    4 A. Yes.    5 Q. And if you continue looking at the    6 other periods discussed, which are April 2005 to    7 July 2005, and continuing on to the next two    8 pages after August 2005, September 2005 to March    9 2006 and April 2006 and thereafter, that it    10 appears that the same 1.2 multiplier was used?    11 A. Yes, that's correct.    12 Q. Is that consistent with your    13 recollection of how the MAC program multiplier    14 was set?    15 A. That's the history of the MAC    16 multiplier, to my knowledge.    17 Q. What is the -- do you know what the MAC    18 multiplier is right now?    19 A. I believe it's 1.2.    20 Q. Do you understand why the multiplier    21 was set at 1.2 rather than 1.0?    22 A. I understand the purpose of the</p>	<p style="text-align: right;">Page 410</p> <p>1 acquisition costs; is that correct?    2 A. That's what the document states.    3 Q. Okay. So when Indiana chose to    4 reimburse drugs at average -- chose to set its    5 MAC rate program -- its MAC program at a    6 multiplier of 1.2 of average actual acquisition    7 costs, it was seeking to make sure that there was    8 reasonable access MAC for providers to    9 pharmaceuticals -- pardon me, strike that.    10 So it's your understanding that the MAC    11 rate is set above average actual acquisition    12 costs in Indiana; is that correct?    13 A. Since the state MAC rate is 1.2 times    14 the base rate, that would be the case, yes.    15 Q. Okay. The state MAC rates exceed    16 average actual acquisition costs by 20 percent;    17 is that correct?    18 A. That's correct.    19 Q. And that was Indiana's choice to make?    20 They were not -- Indiana was not forced to choose    21 to pay a 20 percent premium to average actual    22 acquisition costs; is that correct?</p>